APPENDIX

Section one of the Sherman Act, 15 USC §1, provides in pertinent part:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations is declared to be illegal.

Section three of the Sherman Act, 15 USC §3 provides in pertinent part:

> Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and and State of States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal.

Section three of the Clayton Act, 15 USC §14 provides in pertinent part:

> That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise,

machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 81-1760 | September Term, 1981

Dr. Nathaniel F. Williams, : Civil Action No. 79-02721
Appellant,

v. : FILED June 4, 1982

VISION CARE SERVICE, INC. :
Appellee.

Appeal from the United States District Court for the District of Columbia.

Before WRIGHT and MIKVA, Circuit Judges, and Jameson,* Senior District Judge.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was briefed and argued by counsel. The issues presented have been accorded full considerations by the court; they occasion no need for an opinion. See Local Rule 13(c).

This court is of the view that this appeal should be dismissed, without prejudice to the litigation of appellant's contract claims in the Superior Court of the District of Columbia.

On consideration of the foregoing, it is ORDERED and ADJUDGED by this court that this appeal is dismissed without prejudice.

It is FURTHER ORDERED by the court, sua sponte, that the Clerk shall withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See Local Rule 14, as amended November 30, 1981.

Per Curiam
For the Court

George A. Fisher
Clerk

*Of the District of Montana, sitting by designation pursuant to 28 U.S.C. §294(d) (1976).

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 81-1760 September Term, 1981

Dr. Nathaniel F. Williams, : Civil Action
Appellant, No. 79-02721

v. : FILED

VISION CARE SERVICE, INC. : August 5, 1982
Appellee.

BEFORE: Robinson, Chief Judge, Wright, Tamm, MacKinnon, Wilkey, Wald Mikva, Edwards, Ginsburg and Bork, Circuit Judges

O R D E R

Appellant's suggestion for rehearing en banc has been circulated to the full Court and no member of the Court has requested the taking of a vote thereon. On consideration of the foregoing, it is

ORDERED by the Court en banc that appellant's suggestion is denied.

Per Curiam
For The Court

GEORGE A. FISHER, CLERK

By:
Robert A. Bonner
Chief Duputy Clerk

March 10,1971

This "VCS Doctors' Manual" is an updating and expansion of the "Guidelines for Participating Doctors" which was published on July 1, 1870.

It is the responsibility of each Doctor to be familiar with all provisions of this "Manual" and any error, oversight or deviation from it, without the prior approval of the Board of Trustees of Vision Care Services, Inc., will be considered a violation of the Agreement between the Participating Doctors and V.C.S., Inc. and will be dealt with accordingly. Flagrant violators will be removed from the Panel of Doctors of VCS, should such drastic action be deemed necessary.

If there are any omissions, corrections or questions about this "Manual," please communicate with one of the members of the Board of Trustees. We will issue addenda and changes as needed which

should be kept with this "Manual" on permanent file to serve as a reference text on Vision Care Services.

Board of Trustees
Vision Care Services, Inc.

2/75

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I. PARTICIPATING DOCTORS

Each Eligible Beneficiary, hereafter called Patient, covered by a Group Contract will receive, included with his Claim Form from the Administrator's office a list of all current Participating Doctors, hereafter called Doctors. This list is revised monthly and the Patient may select a Doctor of his choice. In remote areas where there are no VCS Doctors available, the Patient may select a Doctor from panels of other vision service corporations having an Interchange Agreement with VCS, such as the Optometric Service Corporation of Virginia. The Patient may receive a list of these Doctors upon request to the Administrator. Under such circumstances, the Administrator will process claims from these Doctors and pay in accordance to usual VCS procedures. Doctors may also service patients from other parts of the country whose service corporation has a Reciprocal Agreement, through the Vision Institute of America, with VCS, Inc. For clarification contact one of the Trustees.

II. CERTIFICATION OF ELIGIBILITY

A Vision Care Certificate of Eligibility (Claim Form) must be presented to the Doctor by each Patient prior to the examination. The name on the form must be the same as the Patient to be examined. If not, contact the Administrator's office immediately. Check the expiration date on the Claim Form. If expired, eligibility may be verified in the same manner. Note any exclusions, special authorizations, or in some Contracts, extra charges to the Patient, on the Claim Form. Have the Patient sign the Claim Form during the

initial visit.

III. BENEFITS

The Benefits vary with the Trust Funds but generally each Patient may receive a Visual Survey or a complete Visual Analysis, if indicated, and one pair of prescription lenses, if needed, every year from a VCS Doctor. A frame, when required, may tor's office, a list of all current Participating Doctors, be supplied every two years. Any variations from this, will be noted in the section on Group Contracts.

A. VISUAL SURVEY (SCREENING):

Those Patients with no specific complaints or those who indicate a desire for a routine examination should first be given a Visual Survey. If at any time during the Survey the tests indicate the need for further analysis, the Survey should be terminated and a complete Visual Analysis should be performed. If the Survey indicates no further need for professional services, the Patient should be discharged and the Doctor will be reimbursed for a Visual Survey. The Visual Survey must consist of the following and adequate records must be maintained of the results of these tests:

1. Brief history.

2. Visual Acuity at 20 feet for both eyes.

3. Visual Acuity at 15 inches for each eye and both eyes.

4. Cover test at distance and near.

5. External and internal inspection for pathology or anomalies.

6. Gross versions.

7. Pupillary reflexes.

8. Gross Retinoscopy.

If it is determined that a Visual Analysis is needed, it should be made at this point.

B. VISUAL ANALYSIS:

Any Patient with ocular symptoms or already wearing a prescriptions should be given a Complete Visual Analysis. If a Visual Analysis is deemed necessary, the Doctor will be reinbursed for it according to the schedule called for in the Contract but in no case will be reimbursed for both a Visual Survey and a Visual Analysis. The Visual Analysis will include, but not be limited to, the following:

a. Consultation and occupational analysis.

b. Visual examination

1. Case history.

2. Visual acuity; unaided, with old Rx, with new Rx.

3. Pathological investigation:

(aa) External-the eye and adnexa.

(bb) Internal-Opthalmoscopic examination of media, fundus, blood vessels, and optic nerve head.

(cc) Peripheral field of determinations.

4. Corneal curvature measurements.

5. Refractive procedure:

(aa) Retinoscopy-static and dynamic.

(bb) Phorias-distance and near, horizontal and vertical, through old Rx and new findings.

(cc) Ductions-distance and near, horizontal and vertical.

(dd) Subjective determination - distance and near.

(ee) Plus and minus to blur at near.

(ff) Amplitude of accommodation.

6. Stereopsis evaluation.

7. Color Discrimination.

c. Central fields study and/or tonometric findings for any group member over 35 years of age.

d. Analysis of all findings.

e. Professional advice and determination of Rx, if required.

f. Re-evaluation and progress examination two to six weeks after fitting of new prescription.

C. OTHER SERVICES:

Should a prescription be required, the following other services will be performed:

1. Frame selection and supplying.

2. Prescription ordering, supplying and verifying.

3. Adjustment of new spectacles and instruction on usage.

4. Subsequent servicing (refitting, re-aligning, tightening, etc.) for a period of six months.

IV. PRESCRIPTIONS

All materials must be American made and supplied and invoiced from an Approved optical laboratory. A copy of the invoice must accompany each claim request. "Payment will not be made for materials from any other source unless prior authorization is secured from the Board of Trustees of VCS." The presently approved laboratories include the following:

American Optical Co.	Homer Optical Co.
Balester Optical Co.	New City Optical Co.
Bausch & Lomb, Inc.	Monumental Optical Co.
Hilbert Optical Co.	Trico Optical Co.

A. LIMITATIONS

1. FRAMES:

Only American made frames may be used. The maximum frame allowance is specified in the section on Group Contracts and varies with the Contracts. If the Patient desires a more expensive frame than the maximum frame allowance, bill the maximum allowance on the Claim Form and have the Patient pay the Doctor the difference between the allowance and the actual lab cost.

The Patient must be told in advance if any extra charge is required and, on all Contracts with Fund Administration, Inc. as the Administrator, extra charge must be entered on the Claim Form. Goggle size frames which require oversize lenses are not authorized.

2. LENSES:

Only first quality, corrected curve, white or Pink #1 or 2 may be supplied. Cosmetic tints or coatings, photogray lenses, oversize lenses or any lenses requiring special thickness, base curve, seg style or power are not authorized. If clinical reasons necessitate using such lenses, prior authorization is required,

B. SPECIFIC EXCLUSIONS:

Sunglasses are not authorized. Should a specific Group Contract provide for sunglasses, the Claim Form will so state. The following are also not authorized and require prior

authorization: telescopic, microscopic and pinhole spectacles, ptosis crutches, prosthetic eyes, multifocal cataract lenses, factory order lenses, prism segments, contact lenses, aniseikonic studies and prescriptions, visual training, reading training, color field studies, dark adaptation studies, and special reports (except under Contract #639).

C. PRIOR AUTHORIZATION REQUESTS:

A "Special Claim Request Form" (SCR) may be obtained from the Administrator's office. This form must be completed, giving nature of request, clinical reasons for need, cost of materials, fees requested (if a special complex case), and prognosis of results. The form is to be returned to the Administrator and will be reviewed by the Board of Trustees. If time is a problem, the Administrator can consult with the area Peer Review Trustee for expeditious approval. The Doctor will be notified of the approval or denial of authorization. The actual authorization must be received by the Doctor prior to the rendering of "Specific Exclusions" or "Special Lenses" to the Patient.

D. PATIENTS WITH OWN RX:

Patients having prescriptions from non-participating Doctors may not be filled by Participating Doctors unless a Visual Survey is performed to determine if prescribed Rx adequately fills the need of the Patient. If the Doctor finds that the tests indicate that a change may be needed, a complete Visual Analysis is to be

performed.

V. FEES

The fees entered on the Claim Form must be no more than your usual and customary fees to other Patients. All fees for non-authorized materials and services must be according to the amount specifically authorized on the "Special Claim Request Form" by the Board of Trustees of VCS. An amount equal to 20% of the Professional Fees is retained from all claims, except Part-Time Retail Clerks or for services performed under the VIA Reciprocal Agreement, by VCS to serve as a reserve fund for the possible contingency of poor experience on claims utilization. In most cases this retention is not utilized and is returned to the Doctor at the termination of the Contract under which the claim is paid. The maximum fees vary with the Contracts and will be enumerated in the section on Group Contracts.

VI. SUPPLEMENTAL SERVICES

The Doctor will consider the payment by VCS as payment in full for all authorized services and will not bill the Patient for any part thereof. All services and materials requested by the Patient but not authorized must be explained prior to the actual rendering of such services and must not exceed the actual laboratory cost of materials used plus the following fee schedule for services performed:

A. ADDITIONAL GLASSES:

(Including sun, safety or conventional lenses and frames and all services pertaining thereto.)

1. Single Vision Rx, complete-- $10.00

2. Multifocal Rx, complete----- $13.50

B. LENSES ONLY:

1. Single Vision, each--------- $ 2.00

2. Multifocal, each------------ $ 3.75

C. FRAMES ONLY:

1. Complete frame, including selection------------------- $ 6.00
   (Fund Admin. Contracts) $ 7.00
   (Carday Contracts)
2. Front Only------------------ $ 4.00

3. Temples, each--------------- $ 1.00

Frames ordered when lenses only are authorized (every other year) may be charged to the Patient at lab cost only. No additional service fee is justified since the Material Service Fee covers this service.

D. Hinges and Miscellaneous Repairs $ 1.00

VII. SUBMITTING CLAIM FORM FOR PAYMENT

Only VCS Participating Doctors and Panel Doctors of other Vision Service Corporations with an Interchange Agreement with VCS or a Reciprocal Agreement through VIA may receive payment from VCS. Payment

will usually be made by the Administrator within 30 days after receipt of the properly executed Claim Form. To avoid delay the following must be observed:

A. Services must be performed prior to the expiration date on the Claim Form.

B. Person receiving services must be the person indicated on the Claim Form.

C. Claim must be submitted to Administrator within 90 days from the date the services are performed.

D. All services and materials must be authorized.

E. A valid invoice from an approved laboratory must accompany any claim wherein materials are supplied.

F. Claim Form must be complete and signed by both the Patient and the Doctor.

G. Claim Form and accompanying invoice should be mailed to the address at the top of the form. There are currently two Administrators processing claims for VCS. All inquiries concerning a particular claim or participant should be directed to the Administrator's office serving the Group Contract involved. The address and phone number is at the top of the Claim Form.

VIII. GENERAL INFORMATION

A. QUALITY CONTROL OF SERVICES:

Each Doctor is required to render the best possible service non-discriminately to all Patients he serves. Complete records must be kept of all services performed and periodic inspection of records may be made at any time by the Board of Trustees of VCS upon adequate notice. Vision Care Services, Inc. is an must always be a quality program. Any deviation from this standard may result in removal from the panel of Participating Doctors."

B. GRIEVANCES:

Each Doctor will abide by and comply with the decisions of the Board of Trustees of VCS after proper hearing and due consideration of any complaint, grievance or dispute filed against him with respect to his services, conduct or fees.

C. RULES OF PRACTICE:

Each Doctor will observe and abide by, and conduct his practice in accordance with the Rules of Practice of the American Optometric Association in effect from time to time, and in accordance with the Rules of Practice of the local professional society or societies having jurisdiction in each of his office locations.

D. MEMBERSHIP IN OTHER PANELS:

Each Doctor (except those participating under Interchange or Reciprocal Agreements) represents and warrants that he is not, and will not become, a member of any other group vision care program, panel or similar organization unless specifically authorized by the Board of Trustees of VCS. However, all VCS panel members practicing in Virginia must be members of the Optometric Service Corporation of Virginia.

E. INSURANCE:

Each Doctor will provide the Secretary of VCS annually with a Certificate of Insurance stating that he is covered for a minimum of $100/300,000 of Professional Liability (Mal-practice) Insurance.

F. INQUIRIES:

For additional information concerning your participation in VCS programs, contact the Trustee representative of your area.

VISION CARE SERVICES, INC.

VCS

AREA PEER REVIEW TRUSTEES

BALTIMORE
Norman Zipper, O.D., 747-5882
CENTRAL MARYLAND
V. Eugene McCrary, O.D. (Chairman), 864-5900
WASHINGTON, D.C.
Zachary N. Ephraim, O.D., 628-6465
VIRGINIA
Evart F. Warren, O.D., 356-7757

QUARTERLY NEWSLETTER

JANUARY 1976

FROM THE PRESIDENT:

It has recently come to my attention that there have been inquiries to panel doctors regarding their servicing other programs in vision care. Unfortunately, these inquiries have not been brought to the attention of the Board and VCS was nearly precluded from bidding on a most important contract. It is imperative, for the success of our venture, that the panel doctors contact a VCS officer or Board member when they hear of possible vision care contracts.

In this last instance, because of progress in the bidding process, we will have an opportunity to bid. However, if this did not occur, we would have lost a contract dealing with nearly 10,000 people -- simply because our own doctors did not contact us. Being a member of VCS has certain responsibilities. I trust all of you will live up to them.

PARTICIPATING DOCTOR'S CONTRACT:

Each of you has a copy of your agreement with VCS and one signed by you is on file in our executive office. Please read it over, as you agreed to abide by all conditions contained in the contract. The first and extremely important condition to which your attention is called is called is quoted verbatum here:

"1. I agree to have my name placed on a list of participating doctors who are on the panel of Vision Care Services, Inc., and further agree that I shall not become and represent I am not at present, either directly or indirectly, or on behalf of others, a member of any other group vision care program, corporation (not including any professional service corporation duly organized and licensed under the laws of the state in which I practice and of which I am either a shareholder, an officer, an agent, or an employee), panel, or similar organization, during the term of this contract, unless specifically authorized by the written consent of the Board of Trustees of the Corporation."